

The Senate Special Judiciary Committee offered the following substitute to SB 324:

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 16, 26, 41, and 51 of the Official Code of Georgia Annotated, relating
2 respectively to crimes and offenses; food, drugs, and cosmetics; nuisances; and torts, so as
3 to provide enhanced penalties and requirements for persons involved with or property
4 involved with substances used in connection with manufacturing methamphetamine; to
5 provide for the offense of unlawful endangerment of property; to provide for enhanced
6 penalties for theft or attempt or conspiracy to commit the theft of anhydrous ammonia; to
7 provide for penalties for unlawfully providing materials for production of controlled
8 substances; to provide for penalties for possession of ephedrine; to provide for marketing
9 ephedrine; to provide for penalties related to possession of anhydrous ammonia; to change
10 provisions relating to possession and use of drug related objects; to change provisions
11 relating to dangerous drugs; to change provisions relating to the sale, distribution, or
12 possession of dangerous drugs; to limit over-the-counter sales of methamphetamine precursor
13 drugs; to limit retail sales of methamphetamine precursor drugs; to provide for definitions;
14 to provide for limitations; to provide for the transfer of anhydrous ammonia, tampering with
15 the transfer, and assumption of risk; to provide for related matters; to repeal conflicting laws;
16 and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

18 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
19 amended by adding a new Code section to the end of Part 1 of Article 2 of Chapter 7, relating
20 to general provisions relative to criminal trespass and damage to property, to read as follows:
21

22 "16-7-30.

23 (a) A person commits the crime of unlawful endangerment of property if, while engaged
24 in or as a part of the enterprise for the production of a controlled substance as defined in
25 paragraph (4) of Code Section 16-13-21, the person protects or attempts to protect the
26 production of the controlled substance by creating, setting up, building, erecting, or using

1 any device or weapon which causes or is intended to cause damage to the property of, or
2 injury to, another person.

3 (b) A person convicted of the offense of unlawful endangerment of property shall be
4 punished by imprisonment for not less than one nor more than seven years, unless there is
5 physical injury to a person in which case the person shall be punished by imprisonment for
6 not less than one nor more than ten years."

7 SECTION 2.

8 Said title is further amended by striking the word "or" at the end of subparagraph (a)(5)(B)
9 of Code Section 16-8-12, relating to penalties for certain violations involving theft; by
10 striking the period at the end of paragraph (6) of subsection (a) of such Code section and
11 inserting in lieu thereof a semicolon; and by inserting immediately following paragraph (6)
12 of subsection (a) of such Code section the following:

13 "(7) If the property that was the subject of the theft is any controlled substance as defined
14 by paragraph (4) of Code Section 16-13-21, anhydrous ammonia, or ammonium nitrate,
15 by imprisonment for not less than one nor more than seven years. An attempt or
16 conspiracy to commit a theft of any controlled substance, anhydrous ammonia, or
17 ammonium nitrate shall be punished as provided in Code Section 16-13-33;

18 (8) If the property that was the subject of the theft has a value of less than \$500.00 and
19 was taken with the intent to use the material to manufacture, compound, produce,
20 prepare, test, or analyze amphetamine or methamphetamine or any of their analogs, by
21 imprisonment for not less than one nor more than five years; or

22 (9) If the property that was the subject of the theft is any amount of anhydrous ammonia
23 taken by appropriation of a tank truck, tank trailer, rail tank car, bulk storage tank, field
24 (nurse) tank, or field applicator, by imprisonment of not less than one nor more than 20
25 years."

26 SECTION 3.

27 Said title is further amended by inserting new Code sections after Code Section 16-13-30.2,
28 relating to unlawful manufacture, distribution, or possession with the intent to distribute of
29 imitation controlled substances, to read as follows:

30 "16-13-30.3.

31 (a) No person shall provide any reagents, solvents, or precursor materials used in the
32 production of a controlled substance as defined in paragraph (1) of subsection (a) of Code
33 Section 16-13-1 to any other person knowing that the person to whom such materials are
34 provided intends to use the materials for the illegal production of a controlled substance.

35 (b) Any person who violates subsection (a) of this Code section shall be guilty of a felony

1 and, upon conviction thereof, shall be punished by imprisonment for not less than one nor
2 more than five years.

3 16-13-30.4.

4 (a) It is unlawful for any person to possess any methamphetamine precursor drug with the
5 intent to manufacture amphetamine or methamphetamine or any of their analogs.

6 (b) Possession of more than 24 grams of any methamphetamine precursor drug or
7 combination of methamphetamine precursor drugs shall be prima facie evidence of intent
8 to violate this Code section. This subsection shall not apply to any practitioner or to any
9 product possessed in the course of a legitimate business.

10 (c) Any person who violates subsection (a) of this Code section shall be guilty of a felony
11 and, upon conviction thereof, shall be punished by imprisonment for not less than one nor
12 more than five years.

13 16-13-30.5.

14 (a) It is unlawful for any person to market, sell, distribute, advertise, or label any drug
15 product containing ephedrine, its salts, optical isomers, and salts of optical isomers, or
16 pseudoephedrine, its salts, optical isomers, and salts of optical isomers, for indication of
17 stimulation, mental alertness, weight loss, appetite control, energy, or other indications not
18 approved pursuant to the pertinent federal over-the-counter drug Final Monograph or
19 Tentative Final Monograph or approved new drug application.

20 (b) Any person who violates subsection (a) of this Code section shall be guilty of a felony
21 and, upon conviction thereof, shall be punished by imprisonment for not less than one nor
22 more than five years.

23 16-13-30.6.

24 (a) A person commits the crime of possession of anhydrous ammonia in a nonapproved
25 container if he or she possesses any quantity of anhydrous ammonia in any container other
26 than a tank truck, tank trailer, rail tank car, bulk storage tank, field (nurse) tank, field
27 applicator, or any container approved for anhydrous ammonia by the Department of
28 Agriculture or the United States Department of Transportation.

29 (b) Any person who violates subsection (a) of this Code section shall be guilty of a felony
30 and, upon conviction thereof, shall be punished by imprisonment for not less than one nor
31 more than five years."

1 26-3-3.2.

2 (a) The retail sale of methamphetamine precursor drugs shall be limited to:

3 (1) Sales in packages containing not more than a total of 3 grams of one or more
4 methamphetamine precursor drugs, calculated in terms of ephedrine base,
5 pseudoephedrine base, and phenylpropanolamine base; and

6 (2) For nonliquid products, sales in blister packs, each blister containing not more than
7 two dosage units, or, where the use of blister packs is not technically feasible, sales in
8 unit dose packets or pouches.

9 (b) Any person who pays sales and use taxes pursuant to Chapter 8 of Title 48 who
10 knowingly violates subsection (a) of this Code section shall be guilty of a misdemeanor.

11 (c) Any person who is considered the general owner or operator of the outlet where
12 ephedrine, pseudoephedrine, or phenylpropanolamine products are available for sale who
13 violates subsection (a) of this Code section shall not be penalized pursuant to this Code
14 section if the person documents that an employee training program was in place to provide
15 the employee with information on the state and federal regulations regarding ephedrine,
16 pseudoephedrine, or phenylpropanolamine."

17 SECTION 8.

18 Title 41 of the Official Code of Georgia Annotated, relating to nuisances, is amended by
19 striking Code Section 41-3-1.1, relating to substantial drug related activity upon real property
20 and knowledge of the owner, and inserting in lieu thereof the following:

21 "41-3-1.1.

22 (a) As used in this Code section, the term:

23 (1) 'Drug related indictment' means an indictment ~~by a grand jury~~ for an offense
24 involving violation of ~~Code Section 16-13-30~~ Article 2 of Chapter 13 of Title 16
25 involving possessing, storing, transporting, distributing, or manufacturing controlled
26 substances as that term is defined by paragraph (4) of Code Section 16-13-21; provided,
27 however, that any ~~such~~ indictments which result directly from cooperation between the
28 property owner and a law enforcement agency shall not be considered a drug related
29 indictment for purposes of this Code section.

30 (2) 'Personal property' means a vehicle, boat, or aircraft.

31 ~~(2)(3)~~ (3) 'Substantial drug related activity' means activity resulting in ~~six~~ three or more
32 separate incidents resulting in drug related indictments involving violations occurring
33 within a 12 month period on the same parcel of real property or in the same personal
34 property.

35 (b) Any owner of real or personal property who has actual knowledge that substantial drug
36 related activity is being conducted on such property shall be guilty of maintaining a

1 nuisance, and such ~~real~~ property shall be deemed a nuisance and may be enjoined or
2 otherwise abated as provided in this chapter.

3 (c) The owner of real or personal property shall be deemed to have actual knowledge of
4 substantial drug related activity occurring on a parcel of real property or in personal
5 property if the district attorney of the county in which the property is located notifies the
6 owner in writing of ~~three~~ two or more separate incidents within a 12 month period which
7 result in drug related indictments and, after the receipt of such notice and within 12 months
8 of the first of the incidents resulting in a drug related indictment which are the subject of
9 such notice, ~~three~~ one or more separate incidents occur which result in drug related
10 indictments.

11 (d) The provisions of this Code section are cumulative of any other remedies and shall not
12 be construed to repeal any other existing remedies for drug related nuisances."

13 SECTION 9.

14 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by adding
15 a new Code section to the end of Chapter 1, relating to general provisions, to read as follows:
16 "51-1-50.

17 (a) As used in this Code section, the term:

18 (1) 'Owner' means all of the following persons:

19 (A) Any person who lawfully owns anhydrous ammonia;

20 (B) Any person who lawfully owns a container, equipment, or storage facility
21 containing anhydrous ammonia;

22 (C) Any person responsible for the installation or operation of containers, equipment,
23 or storage facilities for anhydrous ammonia;

24 (D) Any person lawfully selling anhydrous ammonia;

25 (E) Any person lawfully purchasing anhydrous ammonia for agricultural purposes; and

26 (F) Any person who operates or uses anhydrous ammonia containers, equipment, or
27 storage facilities when lawfully applying anhydrous ammonia for agricultural purposes.

28 (2) 'Tamperer' means a person who commits or assists in the commission of tampering.

29 (3) 'Tampering' means transferring or attempting to transfer anhydrous ammonia from
30 its present container, equipment, or storage facility to another container, equipment, or
31 storage facility without prior authorization from the owner.

32 (b) A tamperer assumes the risk of any personal injury, death, and other economic and
33 noneconomic loss arising from his or her participation in the act of tampering. A tamperer
34 or any person related to a tamperer shall not commence a direct or derivative action against
35 any owner as it relates to the act of tampering. Owners are immune from suit by a tamperer
36 or any person related to a tamperer and shall not be held liable for any negligent act or

1 omission which may cause personal injury, death, or other economic or noneconomic loss
2 to a tamperer as it relates to the act of tampering.

3 (c) The immunity from liability and suit authorized by this Code section is expressly
4 waived for owners whose acts or omissions constitute willful or wanton negligence.”

5 **SECTION 10.**

6 All laws and parts of laws in conflict with this Act are repealed.